

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 19-CR-67
)	Green Bay, Wisconsin
vs.)	
)	June 29, 2020
XENGXAI YANG,)	2:33 p.m.
)	
Defendant.)	
)	

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff

UNITED STATES OF AMERICA: United States Department of
Justice
By: Daniel R Humble
Office of the US Attorney
205 Doty Street - Ste 301
Green Bay, WI 53401
Ph: (920) 884-1066
Fax: (920) 884-2297
daniel.humble@usdoj.gov

For the Defendant

XENGXAI YANG: Federal Defender Services of
(Counsel Only) Wisconsin
By: Thomas E Phillip
801 E Walnut St - 2nd Fl
Green Bay, WI 54301
920-430-9900
Fax: 920-430-9901
Email: Tom_Phillip@fd.org

U.S. Official Transcriber: SUSAN ARMBRUSTER, RPR, RMR
Transcript Orders: Susan_Armbruster@wied.uscourts.gov

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TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE COURT: United States of America v. Xengxai Yang, Case No. 19-CR-67. Is that right? Okay and Mr. Phillip, what's the status of the case? I know we've put it off here. You're now on the case. There was a guilty plea entered.

MR. PHILLIP: The history of the case, and I'll be brief because the Court has been through this before. Mr. Yang originally retained counsel. That attorney filed a not guilty by reason of mental disease or defect plea. There was an exam done, and that exam did not support the NGI plea, so the defendant then entered a guilty plea.

But prior to sentencing, the defendant asked for new counsel and asked to either reinstate his NGI plea or withdraw his plea. The Court allowed prior counsel to withdraw, and then I came onto the case.

So my charge, as I saw it, was to find out whether or not there were grounds to withdraw the plea or to reinstate the not guilty by reason of mental disease or defect plea. Toward that end, I retained Denver Johnson, a neuropsychiatrist, to examine the defendant.

The last time we had a status conference was in late May. I think May 22nd. At that time, the doctor had started his examinations but wasn't done yet. So today I can report

1 that Dr. Johnson has seen the defendant and finished all of his
2 in-person work. Because of the Coronavirus and the jail's
3 restrictions, it has taken him, I believe, as many as ten visits
4 to complete his work. His work usually would have been done
5 with two, four or five hour-long visits, but the jail can't
6 accommodate that and can't accommodate face-to-face meetings, so
7 the doctor has been limited to an hour or 90 minutes at a time.
8 He's done his best. I believe he's been effective in that, but
9 it has taken far, far longer than expected.

10 I spoke with the doctor on Friday. He'll be done with
11 his report to me within two weeks. What I would ask is that the
12 Court set a status conference for the end of July. That's about
13 four weeks away. If I get the report within two weeks, that
14 would then give me another two weeks to decide what to do. And
15 again, the way I see the options for my purposes are either I
16 would then tell the Court we should continue to sentencing or I
17 would file a motion to either withdraw the plea or reinstate the
18 not guilty by reason of mental disease or defect plea, so that's
19 the history and the current status from my perspective.

20 THE COURT: Did Dr. Johnson give you any kind of
21 preview that you can share, or is that something either he
22 didn't tell you or you don't want to go into?

23 MR. PHILLIP: Both. But the first is the better one.
24 He didn't give me a preview, no.

25 THE COURT: Okay. And then what's the Government's

1 position on Mr. Phillip's request?

2 MR. HUMBLE: That's fine, Your Honor. No objection.

3 THE COURT: Okay. I don't -- I mean it is
4 unfortunate, and I know there are people who are victims of this
5 offense on the line. I'm sure they are frustrated. It is
6 unfortunate, but the pandemic has really limited the ability of
7 not only attorneys but doctors to investigate or consult with
8 people that are in custody, and that's a problem we simply can't
9 do much about other than try to accommodate as best we can.
10 We're fortunate that the jail is accommodating, Brown County
11 Jail. From what I hear from my colleagues in Milwaukee have
12 been much more successful in accommodating visits by doctors and
13 interviews with attorneys than the jail and defense centers than
14 Milwaukee, so I think we're doing better than most. But I'm
15 sure it doesn't help much for those that are anxiously awaiting
16 resolution of this case.

17 But I think the main thing is we want to make sure
18 that it's done properly, that we don't have to do it twice and
19 that, you know, the case doesn't come back in a year from the
20 court of appeals if we did not make sure that we handled this
21 according to law and according to the circumstances that are
22 taking into consideration the circumstances I outlined.

23 So I would suggest we put this on for a telephone
24 conference on July 29th. Mr. Phillip, does that work for you at
25 1:30 in the afternoon?

1 MR. PHILLIP: Yes, thank you.

2 THE COURT: Mr. Humble?

3 MR. HUMBLE: That's fine, Your Honor.

4 THE COURT: Okay. Then we'll put it on for then.

5 Mr. Phillip, it would be wonderful, I certainly expect you to
6 advise us by that time what your decision is. But if he's going
7 to move to withdraw the plea, I would expect that motion to be
8 filed by that time so we can set it on for a hearing. Sound
9 reasonable?

10 MR. PHILLIP: Yes.

11 THE COURT: Okay. Then that's what we'll do. And
12 that will conclude that case. Just for Mr. Phillip, I thought
13 of you and your office today when looking through Seventh
14 Circuit cases. I don't know if you saw the *David Day v. US*
15 case. It came down last week by Judge Sykes.

16 MR. PHILLIP: No, not yet.

17 THE COURT: Take a look at it. I think you'll find it
18 interesting.

19 MR. PHILLIP: Thank you, I will.

20 THE COURT: Yeah. Okay. Thank you all. By everyone.

21 MR. PHILLIP: Thank you.

22 MR. MAIER: Thank you.

23 (Whereupon proceeding was concluded.)
24
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 19, 2021.

/s/Susan Armbruster

Susan Armbruster

Susan Armbruster, RPR, RMR
United States Official Reporter
517 E Wisconsin Ave., Rm 200A,
Milwaukee, WI 53202
Susan_Armbruster@wied.uscourts.gov